

## **OVERVIEW OF MEDIATION**

### **WHAT IS A BENEFIT REVIEW CONFERENCE (MEDIATION)?**

Mediation is a voluntary, informal dispute resolution process. An impartial third party, the Ombudsman (mediator), assists parties in reaching an agreement. The purpose of mediation is to identify issues, clarify misunderstandings, explore solutions, and negotiate settlement.

### **WHAT IS THE OMBUDSMAN'S ROLE ?**

An Ombudsman cannot be a legal representative for either side and does not render a decision or impose a solution on any party. An Ombudsman is a neutral facilitator in helping the parties to reach a settlement. An Ombudsman manages the mediation and remains impartial.

### **HOW DOES MEDIATION WORK ?**

At mediation the Ombudsman and the parties meet together briefly for the Ombudsman to state his\her role as mediator and for the parties to state their position on the issues. Afterwards, the Ombudsman meets privately (caucus) alternately with each party, conveying settlement proposals to each side until the parties reach an agreement, which is reduced to writing and signed by the participants.

### **HOW LONG DOES MEDIATION TAKE ?**

The time required for mediation varies depending on the issues. Mediation continues until issues are resolved or until mediation is adjourned by either party or by the Ombudsman.

### **WHO PAYS FOR MEDIATION ?**

Ombudsmen are merit system employees of the State of Alabama. Expenses of Ombudsmen are borne by the Workers' Compensation Division. The services of the Ombudsmen are free to all parties.

### **HOW DOES ONE REQUEST MEDIATION ?**

Either party may simply telephone the Workers' Compensation Division in Montgomery, AL at 1-800-528-5166 (in the Montgomery area call 242-2868), and ask to speak with an Ombudsman.

## **WHAT ARE THE BENEFITS OF MEDIATION ?**

**Cases are Handled Quickly:** A mediation session has the effect of bringing settlement negotiations "to a head" much more quickly than if the case proceeds to trial.

**Reduces Expenses of Litigation:** Mediation helps parties take every step possible to settle a case before it goes to Court. While a result cannot be guaranteed in any particular case, mediation is generally a cost-effective way to handle claims.

**Improved Communication:** The mediation session allows you to put your case directly to the person who must make a settlement decision.

**Continuing Relationships:** Mediation is particularly appropriate where the disputing parties will have to work together after the dispute is settled. Mediation allows the parties to stay on the best terms possible by doing everything they can to settle their dispute quickly and avoid litigation.

**Flexibility:** Mediation sessions can be set up very quickly and can be held at convenient times and locations. In addition, parties may negotiate a settlement that involves responsibilities other than paying money.

## **OMBUDSMAN MEDIATION RULES**

### **RULE 1 Agreement of Parties**

Mediation is a voluntary process where the parties to a dispute, with the help of an impartial third party (the "mediator"), attempt to work out a mutually satisfactory settlement of the dispute. Neither the Department of Labor (DOL) nor any mediator has the power or authority to force the parties to mediate or to accept an agreement or settlement.

### **RULE 2 Initiating the Mediation Process**

To begin the mediation process, either party should contact the DOL. When all parties have acknowledged a willingness to mediate, they will then enter into an Agreement to mediate, and an Ombudsman shall inform all parties of their rights and responsibilities under the Workers' Compensation Law of Alabama.

### **RULE 3 Appointment of a Mediator**

Upon agreement of the parties to mediate, DOL will select a mediator from its Ombudsmen. No person shall serve as a mediator in any dispute in which that person has any financial or personal interest in the result of the mediation.

#### **RULE 4 Scheduling**

**Upon agreement, the mediator will work with the parties to establish the time and location of a mediation session. Additional mediation sessions may be scheduled as agreed by the parties and the mediator.**

#### **RULE 5 Conduct of Mediation Sessions**

**Prior to the first scheduled session, the mediator may require the parties to provide the mediator with a brief memorandum setting forth the parties' positions with regard to the issues that need to be resolved. At the direction of the mediator, the memorandum may be exchanged by the parties. At the mediation session(s) the mediator will conduct an orderly settlement negotiation. Parties will be represented by a person with authority to settle the case.**

#### **RULE 6 Authority of Mediator**

**The mediator is authorized to end the mediation whenever, in the judgment of the mediator, further efforts at mediation would not contribute to a resolution of the dispute between the parties. The mediator does not have authority to make a formal record of the mediation session(s) and may not take sworn testimony.**

#### **RULE 7 Privacy**

**Mediation sessions are private. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator.**

#### **RULE 8 Confidentiality**

**The mediator shall not divulge information disclosed to the mediator by the parties or by witnesses in the course of mediation. All records, reports, or other documents received by a mediator while serving as a mediator shall be considered confidential. The mediator shall not be compelled in any adversarial proceeding or judicial forum to divulge the contents of such documents or the fact that such documents exist or to testify in regard to the mediation. By participating in the mediation process, the parties agree not to subpoena or otherwise testify or produce records, notes, or work product in any adversarial proceeding between the parties. In the event the parties do reach a settlement agreement during the mediation which becomes final and binding in accordance with the provisions of Section 39 of Act No. 92-537, that settlement agreement will be admissible in court or arbitration proceedings to enforce it.**

### **RULE 9 No Record**

**There shall be no formal record made of the mediation proceedings and no recordings or stenographic records shall be made.**

### **RULE 10 Counsel**

**The parties may be represented by an attorney at any stage of the mediation process. An employee shall be advised at the first mediation session of his or her right to be represented by counsel by a writing which shall be notarized.**

### **RULE 11 Settlement**

**If a dispute is resolved in whole or in part during mediation, the Ombudsman shall reduce the agreement to writing, and the Ombudsman and each party shall sign the agreement. The signed agreement shall be binding on all parties unless within 60 days after the agreement is signed a court of competent jurisdiction relieves all parties of the effect of the agreement because of fraud, newly discovered evidence, or other good cause. At the end of said 60-day period, the agreement shall be final and irrevocable. At any time during said 60-day period, the parties may present the settlement agreement to a court of competent jurisdiction for approval in accordance with the Workers' Compensation Law of Alabama.**

### **RULE 12 Termination**

**The mediation shall be terminated by the parties reaching a settlement; by a declaration by the mediator to the effect that, in the opinion of the mediator, further efforts at mediation are no longer worthwhile; or by a declaration by any party, at any time, that the mediation proceedings are terminated.**

**For free dispute resolution through mediation call 1-800-528-5166, and ask to speak with an Ombudsman. In the Montgomery area call 242-2868.**